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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION

17 EPIC GAMES, INC.,
Plaintiffs, Counter-defendant
18 v.
19

APPLE INC.,
Defendant, Counterclaimant
20 IN RE APPLE IPHONE ANTITRUST
LITIGATION

21 DONALD R. CAMERON, *et al.*,
Plaintiffs,
22 v.
23

APPLE INC.,
Defendant
24
25

CASE NO. 4:20-cv-05640-YGR-TSH

CASE NO. 4:11-cv-06714-YGR

CASE NO. 4:19-cv-03074-YGR

**DECLARATION OF JAY P. SRINIVASAN
IN SUPPORT OF ADMINISTRATIVE
MOTION TO FILE UNDER SEAL THE
JOINT DISCOVERY LETTER BRIEF AND
SUPPORTING EXHIBITS REGARDING
CUSTODIANS**

Hon. Yvonne Gonzalez Rogers
Hon. Thomas S. Hixson

1 Pursuant to Civil Local Rule 79-5, I hereby declare as follows:

2 1. I am an attorney licensed to practice in the State of California, and a member of the
 3 Bar of this Court. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, counsel of record
 4 for Defendant Apple Inc. (“Apple”) in this case. I am familiar with Apple’s treatment of highly
 5 proprietary and confidential information, based on my personal experience representing Apple.¹ I
 6 have personal knowledge of the facts stated below and, if called as a witness, I could and would
 7 testify competently thereto. I submit this declaration in support of Plaintiffs’ Joint Discovery Letter
 8 Brief and Supporting Exhibits Regarding Additional Apple Custodians (“Joint Discovery Letter
 9 Brief”).

10 2. The request for relief is narrowly tailored and necessary to the confidentiality of
 11 information in certain documents described below.

12 3. In determining whether to permit documents to be filed under seal, courts in the Ninth
 13 Circuit apply two separate standards: (1) the “compelling reason” test for sealing information in
 14 connection with motions for a determination on the merits of a claim or defense; and (2) the less-
 15 restrictive “good cause” test for sealing information in connection with non-dispositive filings.

16 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006); *Center for Auto*
 17 *Safety v. Chrysler Grp., LLC*, 809 F.3d 1092 (9th Cir. 2016). Here, the less-restrictive good cause
 18 test applies, because the underlying dispute is non-dispositive.

19 4. Apple operates in an intensely competitive marketplace. It occupies a unique
 20 position as a leader with respect to a number of highly dynamic technologies. Apple has serious and
 21 legitimate concerns that competitors will be quick to pounce on any release of Apple’s highly
 22 sensitive, proprietary information in order to gain competitive advantage. At the same time, Apple
 23 must guard against nefarious actors on the lookout for information that might help them hack into
 24 Apple systems, whether to steal proprietary information and then sell it or in order to disrupt Apple’s

25 ¹ Courts in this District routinely grant motions to seal on the basis of declarations of counsel submitted pursuant to
 26 Local Rule 79-5. See, e.g., *In Re Qualcomm Litig.*, No. 17-00108, Dkt. 398-1 (S.D. Cal. Mar. 3, 2018); *Avago*
 27 *Techs. U.S. Inc., et al. v. Iptronics Inc., et al.*, No. 10-02863-EJD, Dkt. 544 (N.D. Cal. Apr. 3, 2015); *Cisco Sys., Inc.,*
 28 *et al. v. Opentv Inc., et al.*, No. 13-00282-EJD, Dkt. 76 (N.D. Cal. Oct. 8, 2018). I am personally familiar with
 Apple’s safeguarding of proprietary information, but if the Court deems this declaration insufficient, Apple
 respectfully requests that it be permitted to file a further declaration supporting filing under seal.

provision of products and services. As such, Apple takes extensive measures to protect the confidentiality of its proprietary information.

5. Here, Apple seeks to seal the following portions of the exhibits supporting the Joint Administrative Motion which contain, reflect, or discuss highly-sensitive, non-public information, the exposure of which would critically harm Apple:

- 1) The Joint Discovery Letter Brief, pp.3-5, which references correspondence regarding sensitive business decisions regarding app review, device security, and the protection of consumer privacy.
- 2) Exhibit 1, pp.6-8, which provides nonpublic information regarding the organizational structure of certain key Apple teams and the direct reports of certain designated custodians;
- 3) Exhibit 4, p.2, which contains information about accessing a nonpublic database that Apple uses to transfer its produced documents to Plaintiffs;
- 4) Exhibit 6, pp.4, 6-10, which quotes or provides detailed information regarding Apple's sensitive business information.

6. The Court has "broad latitude" "to prevent disclosure of materials for many types of information, including, *but not limited to*, trade secrets or other confidential research, development, or commercial information." *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original)

7. Specifically, Apple seeks to seal portions of the above exhibits that reflect highly confidential information regarding Apple's business organization, information about accessing a nonpublic database for the transfer of highly confidential documents relevant to the litigations, and documents discussing sensitive business information. The public disclosure of such information would cause Apple economic harm and put it at competitive disadvantage. See *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016), cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S. Ct. 38 (2016) (finding there was a compelling reason for sealing when records contain business information that could be used to harm a litigant's competitive standing).

1 8. In addition to the competitive harms posed by public availability of these documents,
 2 public disclosure of this information would risk providing assistance to competitors and third parties
 3 seeking to unlawfully access or steal data. Apple takes many steps, and undertakes substantial
 4 efforts, to safeguard information—including its trade secrets and data of its customers and developers
 5 who use Apple’s technology—and keeping those efforts confidential is important to their
 6 effectiveness.

7 9. The information Apple seeks to protect is foundational to its business, and Apple has
 8 exerted great effort and undertaken substantial expense to protect such information. Apple has
 9 narrowly tailored its sealing request so as to maximize the public’s access to court records without
 10 jeopardizing Apple’s business interests. Below is a chart detailing the specific items that are
 11 sealable for the reasons explained herein. Apple is also lodging with the Court versions of Exhibits
 12 1, 4, 6 that indicate (but do not apply) the proposed redactions.

Document to be Sealed	Page Number of PDF	Sensitive Information to be Redacted	Notes
Joint Discovery Letter Brief	pp.3-5	Contains information that reveals correspondence regarding sensitive business decisions regarding app review, device security, and the protection of consumer privacy.	In these proposed redactions, Apple seeks to seal only particular portions of the Joint Discovery Letter Brief that reveal sensitive information business and security information. Disclosure of this information proposed for sealing would provide the public and competitors access to the highly confidential information regarding Apple’s business decisions regarding app review, device security, and the protection of consumer privacy. Disclosure of this information would be harmful to Apple. It would, for example, provide Apple’s competitors and potential bad actors with private information about Apple’s processes and policies. This

Document to be Sealed	Page Number of PDF	Sensitive Information to be Redacted	Notes
Exhibit 1	pp.6-8	Contains information that reveals the structure of certain Apple organizations and provides the names of some non-custodial individuals that report to certain custodians.	<p>information could be used to try to gain competitive advantage.</p> <p>In these proposed redactions, Apple seeks to seal only particular portions of Exhibit 1 that reveal sensitive information of the direct reports to certain designated custodians.</p> <p>Disclosure of this information proposed for redaction, and thus the decisions that Apple makes regarding its organizational structure of certain groups operating at Apple, would provide insight into Apple's internal business strategy. Disclosure of this information would be harmful to Apple. It would, for example, provide Apple's competitors and potential bad actors with private information about Apple's processes and procedures with respect to the organization of certain key teams. This information could be used in attempts to gain competitive advantage or to map the internal structure of Apple's business organization for unlawful purposes.</p>
Exhibit 4	p.2	Contains information about accessing a nonpublic database that Apple uses to transfer its produced documents to Plaintiffs.	<p>In these proposed redactions, Apple seeks to seal only particular portions of Exhibit 4 that reveal information about data security measures and nonpublic database about accessing a nonpublic database that Apple uses to transfer its produced documents to Plaintiffs in these litigations.</p> <p>Disclosure of this information proposed for sealing would provide the public and competitors access to the highly</p>

Document to be Sealed	Page Number of PDF	Sensitive Information to be Redacted	Notes
			confidential information Apple has produced to Plaintiffs in the litigation. Disclosure of this information would be harmful to Apple. It would, for example, provide Apple's competitors and potential bad actors with private information about Apple's processes and procedures with respect to data used in the course of its business. This information could be used to try to gain competitive advantage or to access Apple's computer systems for unlawful purposes.
Exhibit 6	pp.4, 6-10	Contains information that reveals the details of confidential documents Apple produced regarding Apple's revenue model, decisions related to the development of certain Apple systems, correspondence among Apple executives regarding the creation of the Mac App Store, information on Apple's competitors, information regarding Apple's app review process, and information regarding Apple's pricing strategies.	In these proposed redactions, Apple seeks to seal only particular portions of Exhibit 6 that reveal the details of confidential documents Apple produced regarding Apple's revenue model, decisions related to the development of certain Apple systems, correspondence among Apple executives regarding the creation of the Mac App Store, information on Apple's competitors, information regarding Apple's app review process, and information regarding Apple's pricing strategies. General descriptions of the documents within the body of the correspondence are not redacted. Disclosure of this information proposed for redaction, and thus the decisions that Apple makes regarding its business operations and revenue models, among other information, would provide insight into Apple's internal business strategy. Disclosure of this information would be harmful

Document to be Sealed	Page Number of PDF	Sensitive Information to be Redacted	Notes
			to Apple. It would, for example, provide Apple's competitors with private information about Apple's processes and procedures for implementing particular strategies. This information could be used in attempts to gain competitive advantage.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on December 11, 2020, at Los Angeles, California.

DATED: December 11, 2020

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Jay P. Srinivasan
Jay P. Srinivasan

Attorney for Defendant Apple Inc.

CERTIFICATE OF SERVICE

I, Jay P. Srinivasan, hereby certify that on December 11, 2020, I caused the foregoing

**DECLARATION OF JAY P. SRINIVASAN IN SUPPORT OF ADMINISTRATIVE MOTION
TO FILE UNDER SEAL THE JOINT DISCOVERY LETTER BRIEF AND SUPPORTING
EXHIBITS REGARDING CUSTODIANS** to be filed electronically through the CM/ECF system